

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,
BOARD OF FUNERAL DIRECTORS

Petitioner,

v.

SHARON JOHNSON-SALLEY
Respondent.

Case No.: CR-B-07-800053

FINAL ORDER

I. Introduction

On December 21, 2006, the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) through the Board of Funeral Directors (“Board”) (collectively, the “Government”) issued a Notice of Intent to Take Disciplinary Action (“Notice”) against Respondent Sharon Johnson-Salley. The Notice informed Respondent that the Government sought to suspend or revoke Respondent’s license to act as a Funeral Director, based upon seven specified charges. *See* D.C. Code, 2001 Ed., 2001 Ed. § 47-2853.17.

On December 28, 2006, Respondent submitted a written request for a hearing with the Board. The Board filed a copy of the Notice with this administrative court, along with a request from the Business and Professional Licensing Administration for this administrative court to conduct formal adjudication proceedings in the matter. This request was interpreted as a delegation of authority to hold a hearing and issue a final decision in this matter. D.C. Code, 2001 Ed., 2001 Ed. § 2-1831.03(i).

After resolution of numerous pre-trial issues and an attempt at mediation, an evidentiary hearing was held in this matter on February 28, 2008. The Government was represented by Tasha Hardy, Esq., and Respondent by John F. Mercer, Esq. Stonewall Stewart, Patricia Hill, Investigator, Shelton Hackett, Sr., Wes Chavis, Lisa Tabron, Communications Intake Specialist, District of Columbia Office of the Chief Medical Examiner ("OCME"), and Michelle Mack, Supervisory Legal Medical Investigator, OCME, testified on behalf of the Government. Respondent, with Leonard Garrett, testified on her own behalf. During the hearing, I admitted the Government's exhibits 1 through 3 (each with multiple sub-parts) and Respondent's exhibit 200 into evidence.

II. Findings of Fact

1. Respondent has a Bachelors Degree in Business and an Associates Degree in Mortuary Science and is a licensed Funeral Director (and has been so licensed since approximately 1993). Exhibits 1, 2-1 through 2-25.

2. Capitol Mortuary is an incorporated funeral home in the District of Columbia. Exhibit 1-6. Capitol Mortuary is located at 1425 Maryland Ave., NE., and has a Certificate of Occupancy to operate at this site. Exhibit 1-7. Capitol Mortuary was opened by Respondent's father (William Johnson) in 1984. Respondent has worked at Capitol Mortuary since it was opened by Mr. Johnson. Though he was the founder of Capitol Mortuary, Mr. Johnson was never a licensed Funeral Director. Respondent is a Director in the corporation, and during calendar years 2001 through 2004, Respondent held the corporate title of Vice President/Treasurer. At all times relevant hereto, Respondent was the only licensed Funeral Director among the corporate Directors.

3. Respondent has been married to Darryl Salley for approximately twenty years. Mr. Salley has worked at Capitol Mortuary since sometime prior to calendar year 2001, but is not and never has been a licensed Funeral Director in the District of Columbia. Exhibits 1, 1-3, 1-5.

4. Prior to retiring in late 1994 or early 1995, Stonewall Stewart was employed by Capitol Mortuary. Mr. Stewart was, at all times relevant herein, a licensed Funeral Director in the District of Columbia. After retiring from Capitol Mortuary, Mr. Stewart moved to South Carolina. Mr. Stewart and Mr. Johnson had an agreement that after Mr. Stewart's retirement, Capitol Mortuary would keep Mr. Stewart's Funeral Director's license current with the District of Columbia government. Respondent would frequently, if not always, prepare the license renewal application for Mr. Stewart. Mr. Stewart did not pick up any bodies or otherwise work for Capitol Mortuary during calendar years 2001, 2002, 2003, and 2004.

5. Whenever a funeral home picks up a cadaver at OCME, the transporter is required to present a valid Funeral Director's license and picture identification. The transporter is also required to sign a *Receipt of Remains* form that records the name of the decedent, the transporter, and the funeral home/service. See exhibits 1-15 through 1-18. The Receipt of Remains forms are kept at OCME. Beginning in January 2001 and continuing through April 2004, Darryl Salley used Mr. Stewart's Funeral Director's license and an apparently falsified State of Maryland Driver's license in Mr. Stewart's name (although the first name on the Driver's License was spelled slightly differently) to pick up human remains from OCME on behalf of Capitol Mortuary. Exhibits 1-15 through 1-18. On January 30, 2004, an application to renew Mr. Stewart's Funeral Director's license was filed with the Board. Exhibit 1-10. Mr. Salley's picture was attached to the application to renew Mr. Stewart's license. Exhibit 1-10. The funeral establishment identified on the renewal application is Capitol Mortuary and Capitol Mortuary's

address was listed on the renewal application. Exhibit 1-10. The license application and late fees associated with the renewal application were paid with check no. 1009. Exhibit 1-10.

6. After a cadaver is delivered to a funeral home, a Funeral Director at the funeral home is required to sign the Certificate of Death to indicate the method of disposition of the remains (e.g. burial), date of disposition, and the place and location of disposition. *See* exhibit 2-1. During the years that Mr. Salley was using Mr. Stewart's Funeral Director's license to pick up remains at OCME on behalf of Capitol Mortuary, Respondent would sign the Certificates of Death, as Funeral Director of Capitol Mortuary, for the human remains that had been picked up by Mr. Salley. Exhibits 2-1 through 2-25.

7. From January 2001 through April 2004, Capitol Mortuary had an arrangement with Mr. Lattimore, a licensed Funeral Director. This arrangement allowed Mr. Lattimore to use Capitol Mortuary's facilities to provide funeral services while operating his own funeral business. The arrangement also allowed Capitol Mortuary to use Mr. Lattimore's services as a Funeral Director on an as-needed basis. For most of calendar years 2001 through 2004, if not for all, Mr. Lattimore was the sole embalmer for Capitol Mortuary.

8. Capitol Mortuary is located in a three-story building. The basement level is used to receive human remains and prepare the remains for funerals (including embalming the cadaver). Human remains are delivered to the basement through a rear loading area. A Capitol Mortuary employee (e.g. Mr. Johnson, Mr. Salley or Mr. Lattimore) would be on hand to receive the remains. The first or main floor is used for funeral services and accessed by the public using the front door(s). The second floor (top floor) is the office/administrative space. Respondent would meet with customers in the office on the second floor. From January 2001 through April 2004,

Respondent mostly worked on the first and second floors of the building. Respondent had very little direct contact with the remains before the cadavers were brought to the main floor for the viewing and funeral services. Respondent rarely, if at all, was in the basement when bodies were delivered.

9. In 2001, Capitol Mortuary would pay a removal service to pick up and deliver human remains from the OCME. Respondent was aware during the relevant times that the governing regulatory scheme limited the persons who can transport human remains to licensed Funeral Directors. Capitol Mortuary handles approximately 250 bodies per year.

10. At all times relevant hereto, Respondent managed the office functions for Capitol Mortuary. These responsibilities included: interacting with families, organizing funerals, typing Certificates of Death, contacting limousine and hearse drivers (as needed), calling in newspaper death notices and ordering flowers. Respondent rarely picked up bodies from OCME and never embalmed bodies. Respondent functioned as a corporate Treasurer as well. Despite the fact that Mr. Johnson was not a licensed Funeral Director, as the founder of Capitol Mortuary and Respondent's father, Respondent deferred to Mr. Johnson as he was "in charge" of Capitol Mortuary during calendar years 2001 through 2004.

III. DISCUSSIONS AND CONCLUSIONS OF LAW

The Government leveled the following charges against Respondent:

Charge I: fraudulently or deceptively used a funeral director's license in violation of D.C. Code, 2001 Ed. § 47-2853.17(a)(3);

Charge II: knowingly provided false or misleading information in support of a renewal application for funeral director in violation of D.C. Code, 2001 Ed. § 47-2853.17(a)(1);

Charge III: willfully breached a statutory, regulatory, or ethical requirement of the profession or occupation in violation of D.C. Code, 2001 Ed. § 47-2853.17(a)(16);

Charge IV: violated District laws, regulations, or rules related to the practice of an occupation or profession in violation of D.C. Code, 2001 Ed. § 47-2853.17(a)(19);

Charge V: engaged in misrepresentation or fraud in the conduct of the business of a funeral services establishment as a funeral director, for which the Board of Funeral Directors may take disciplinary action pursuant to D.C. Code, 2001 Ed. § 3-408(a)(6);

Charge VI: willfully acted as a funeral director with an unauthorized person, and aided an unauthorized person to act as a funeral director in violation of D.C. Code, 2001 Ed. § 47-2853.17(a)(13); and

Charge VII: conspired with, or aided and abetted, persons in the violation or circumvention of District law relating to the practice of funeral directing, for which the Board of Funeral Directors may take disciplinary action pursuant to D.C. Code, 2001 Ed. § 3-408(a)(6).

The Government maintained that Respondent knew that her husband (Mr. Salley) was transporting human remains on behalf of Capitol Mortuary by using Mr. Stewart's license. The Government argues in the alternative that as the principal Funeral Director for Capitol Mortuary, Respondent was responsible for managing the day-to-day operations of Capitol Mortuary, such that Respondent had an obligation to know that Mr. Salley was using Mr. Stewart's Funeral Director's license to engage in regulated activities on behalf of Capitol Mortuary. *See* 17 DCMR 3102.1(b)(1). The Government contends that Respondent's (in)actions amounted to acts for which the Board of Funeral Directors is authorized to take disciplinary action pursuant to D.C. Code, 2001 Ed. §§ 3-408 and 47-2853.17. Respondent denies being involved, directly or

indirectly, with any of the alleged acts of her husband. Respondent argues that the Government has failed to prove by a preponderance of evidence that Respondent violated the governing regulatory scheme as alleged.

A. Applicable Law

D.C. Code, 2001 Ed. § 3-408 sets forth the bases upon which a Funeral Director's license may be denied, suspended or revoked. Specifically, the statute authorizes disciplinary action when it is determined that a licensee has "conspired with, or aided and abetted, persons in the violation or circumvention of any provision of this chapter." D.C. Code, 2001 Ed. § 3-408(a)(6). As part of the regulatory scheme, local law defines the "practice of funeral directing" as "engaging in the care and disposal of human remains or the preserving by embalming or otherwise of human remains for transportation, funeral services, burial, or cremation." D.C. Code, 2001 Ed. § 3-402(18). In support of this statutory definition, the pertinent regulations define "funeral directing" as "the care, preservation, disposal, or preparation of human remains for funeral services, burial, cremation, or transportation." 17 DCMR 3199.1. Local law also specifically prohibits a Funeral Director from engaging "in any unfair, deceptive, or misleading act or practice, or unfair method of competition in the funeral profession." D.C. Code, 2001 Ed. § 3-408(a)(2).

The governing licensing regulations authorize suspension, revocation or imposition of a civil penalty when it is determined that a Funeral Director has:

(b) [Engaged] in any unfair, deceptive, or misleading act or practice, or unfair method of competition in the funeral profession, including illegally fixing or maintaining prices or illegally restraining trade;

(c) Violated or permitted an employee or agent to violate any provision of the Act, this chapter, chapter 31 of this title, or federal laws, or regulations

pertaining to the practice of funeral directing or funeral services establishments;

(d) Conspired with, or aided or abetted any person or entity in the violation or circumvention of any provision of the Act, this chapter, chapter 31 of this title, or federal laws or regulations pertaining to the practice of funeral directing or funeral services establishments

(l) Acted in a manner inconsistent with the health, welfare, or safety of the public, including, but not limited to, the following:

* * *

(20) Delegating funeral directing responsibilities to a person when the applicant or licensee knew or should have known that the person was not qualified or authorized to perform them.

17 DCMR 3013(a), 3013(b), 3013(c), 3013(d), 3013(l), and 3013(l)(20).

The licensing statute also authorizes the Board to take disciplinary action when a licensee:

(13) Willfully practices an occupation or profession with an unauthorized person or aids an unauthorized person in the practice of an occupation or profession;

(16) Willfully breaches a statutory, regulatory, or ethical requirement of the profession or occupation, unless ordered by a court;

(19) Violates any District or federal law, regulation, or rule related to the practice of the occupation or profession.

D.C. Code, 2001 Ed. §§ 47-2853.17(a)(13), 47-2853.17(a)(16), 47-2853.17(a)(19).

Finally, the regulations specify that when a funeral home is owned by a “business entity,” *e.g.* a corporation, the funeral home shall ensure that:

(A) One of the [funeral home] applicant's owners is a funeral director who is licensed and in good standing in the District of Columbia; and

(B) The [funeral home] applicant has designated a principal funeral director who is licensed and in good standing in the District of Columbia to be responsible for the daily operation of the funeral services establishment.

17 DCMR 3102.1(b)(1).

It is against this regulatory backdrop that I analyze the evidence presented in this case. I will address each Charge separately beginning with those Charges that I conclude the Government has met its case by a preponderance of evidence. D.C. Code, 2001 Ed. § 3-409. *See Sherman v. Commission on Licensure to Practice the Healing Art*, 407 A.2d 595, 600-601 (D.C. 1979) (holding that Due Process does not require use of a higher standard of proof than preponderance of the evidence in disciplinary proceedings against health professionals).

B. The Charges

Charges III, IV and VI

In these Charges, the Government alleged that Respondent violated D.C. Code, 2001 Ed. §§ 47-2853.17(a)(16), 47-2853.17(a)(19), and 47-2853.17(a)(13), respectively. These charges alleged that Respondent willfully breached a statutory and regulatory requirement governing the Funeral Director's profession; willfully violated the Funeral Director's profession with her husband, Mr. Salley (who is unauthorized to carry out regulated activities), or aided him in violating the Funeral Director's profession; and violated a statutory and regulatory requirement governing the practice of the Funeral Director's profession. *See Charges III, IV and VI*, respectively. Essentially, the Government's argument is a rejection of Respondent's contention that she did not know that her husband was transporting human remains on behalf of Capitol Mortuary. Further, the Government maintains that even if Respondent was unaware of her husband's activities, as principal Funeral Director at Capitol Mortuary, Respondent had the obligation and the means to know who was transporting human remains for Capitol Mortuary.

Respondent counters by arguing that the Government failed to establish by a preponderance of evidence that Respondent engaged in any of the alleged intentional violations

of the regulatory scheme. Rather, Respondent maintains that the Government pivoted during its case from presenting evidence showing willful or intentional action on Respondent's part, to presenting evidence that attempts to establish that Respondent is culpable on the theory that Respondent is liable for the violations because she should have known that Mr. Salley was improperly transporting human remains to Capitol Mortuary (Respondent called this a "twisted notion of '*respondeat superior*'"). Respondent argues that the Government's tactical shift renders the Government's case fatally flawed because the evidence presented failed to establish that Respondent engaged in any willful actions; such that Respondent can not be held liable for the alleged violations.

As noted above, the regulatory scheme governing Funeral Directors defines the practice of "funeral directing" to include the care and transportation of human remains. *See* D.C. Code, 2001 Ed. § 3-402(18), 17 DCMR 3199.1. The pertinent statute and regulations also specifically prohibit a Funeral Director from engaging "in any unfair, deceptive, or misleading act or practice, or unfair method of competition in the funeral profession." D.C. Code, 2001 Ed. § 3-408(a)(2), 17 DCMR 3013.2(b). Charges III and IV require the Government to establish that Respondent acted "willfully." Charge VI requires only that the Government establish that Respondent violated the governing regulatory scheme.

Willful conduct is intentional or deliberate rather than inadvertent or accidental. *Hager v. D.C. Dep't of Consumer and Regulatory Affairs*, 475 A.2d 367, 368 (D.C. 1984). Willfulness means "something worse than good intentions coupled with bad judgment." *Sherman v. Comm'n on Licensure to Practice the Healing Art*, 407 A.2d 595, 599 (D.C. 1979) (quoting *Mullen v. United States*, 263 F.2d 275, 276 (1958)). In *M.B.E Inc. v. Minority Bus. Opportunity Comm'n of D.C.*, 485 A.2d 152, 158 (D.C. 1984), the court held that in finding willfulness the

focus “is on the intentional performance of a prohibited act.” The term “willful” is more restrictive than “knowingly” in that it requires proof of a culpable mental state, *i.e.*, an intent to violate the law. *Parreco v. D. C. Rental Hous. Comm’n*, 885 A.2d 327, 337 n.15 (D.C. 2005).

Based on the decision in *M.B.E. Incorporated*, 485 A.2d at 159, a willful violation occurs if a person 1) intentionally does an act that is prohibited without regard to motive or reliance on erroneous advice or 2) acts with careless disregard of statutory requirements. *M.B.E. Incorporated*, 485 A.2d at 159. In other words, “willfulness” does not necessarily require intent to do harm; but does require a conscious indifference to consequences under circumstances likely to cause harm. *See Sherman*, 407 A.2d at 600.

Respondent noted in her testimony that when a funeral establishment is unable to send a licensed Funeral Director to OCME (or nursing home, or private home) to transport human remains, the funeral establishment must pay a “removal service” to transport the body to the funeral home for the funeral service. Respondent understood that human remains may only be transported by licensed Funeral Directors. Wes Chavis, Owner, Wesley Chavis, III, Funeral Services, testified that he provides “removal services” to local funeral establishments and is paid for this service. Shelton Hackett, Sr., Owner, Hackett Funeral Chapel, also testified to the fact that “removal services” charge local funeral establishments for transporting human remains to the funeral home. Consequently, the requirement that restricts the transportation of human remains to licensed Funeral Directors has a direct financial impact on funeral establishments in the District of Columbia.

On behalf of Capitol Mortuary, Mr. Salley went to the OCME to transport twenty-three bodies in calendar year 2001, twenty-nine in calendar year 2002, twenty-six in calendar year

2003, and thirteen cadavers during the first four months of calendar year 2004, for a total of ninety-one bodies. Exhibits 1-14 through 1-18. During the same time frame (January 2001-April 2004), Capitol Mortuary handled, according to Respondent's testimony, approximately 250 bodies per year for a total of approximately 850 during the time in question. Thus, Mr. Salley transported approximately 10% of all bodies for which Capitol Mortuary provided funeral services during the relevant times. Further, during this same time frame, Respondent was "principal Funeral Director" for Capitol Mortuary, the only licensed Funeral Director on Capitol Mortuary's Board of Directors, plus the corporate Vice President/Treasurer.

I credit Respondent's testimony that during the time in question her father was alive and "in charge" of Capitol Mortuary. I also accept that Respondent may not have initiated the scheme to have her husband transport bodies on behalf of Capitol Mortuary. However, I do not credit Respondent's testimony that she knew absolutely nothing about her husband's activities until the Board sent her notice of a complaint regarding her husband in April 2004. Exhibit 1-3. Respondent noted in her testimony that she prepared Certificates of Death on behalf of Capitol Mortuary, organized funerals for customers, interacted with family members, managed office work, contacted limousine and removal service drivers, called in newspaper advertisements and ordered flowers. Exhibits 2-1 through 2-25. During her testimony, Respondent also stated that Capitol Mortuary used removal services during calendar year 2001 to bring human remains to the funeral home. On this point, Respondent was clear. However, Respondent pointedly did not testify that Capitol Mortuary used removal services during calendar years 2002, 2003, or 2004. Given her day-to-day management responsibilities, her corporate responsibilities as Vice President/Treasurer, the financial windfall to Capitol Mortuary associated with Mr. Salley's activities and the fact that Mr. Salley is her husband, I do not find credible Respondent's

testimony that she did not know that her husband was transporting human remains on behalf of Capitol Mortuary.

Consequently, I conclude that the Government has presented a preponderance of evidence establishing that Respondent: 1) willfully breached a statutory requirement of the Funeral Director's profession; namely, engaging in an "unfair method of competition in the funeral profession,"¹ by having Mr. Salley (her husband) transport human remains rather than the more expensive removal service, D.C. Code, 2001 Ed. § 47-2853.17(a)(16); 2) willfully aided Mr. Salley in practicing the Funeral Director's profession when he transported human remains on behalf of Capitol Mortuary, D.C. Code, 2001 Ed. § 47-2853.17(a)(13); and 3) violated local law and regulations related to the practice of the Funeral Director's profession when she allowed her husband to transport human remains (or failed to stop him) on behalf of Capitol Mortuary and, in so violating the regulatory scheme, Respondent engaged in unfair competition. D.C. Code, 2001 Ed. § 47-2853.17 (a)(19).² In other words, the Government has proved Charges III, IV, and VI.

Charge VII

In this Charge, the Government alleged that Respondent violated D.C. Code, 2001 Ed. § 3-408(a)(6) because she conspired with, or aided and abetted, her husband, Darryl Salley, by

¹ See D.C. Code, 2001 Ed. § 3-408(a)(2).

² My conclusion is not based on a theory of *respondeat superior*, because I have determined that Respondent willfully engaged in these actions. However, the Court of Appeals has ruled that the funeral services regulatory scheme in the District of Columbia "codifies the rule of *respondeat superior*, making a licensee liable for the acts of his employees committed during the course of their employment. In the context of the licensing scheme, this means that the licensee may have his license suspended or revoked on account of an employee's conduct." *Vann v. District of Columbia Bd. of Funeral Directors & Embalmers*, 480 A.2d 688, 693 (D.C. 1984) (internal citations omitted). (The regulatory structure governing Funeral Directors has changed since *Vann* was decided; however, the new rules also incorporate the notion of *respondeat superior*. See 17 DCMR 3102.1(b)(1).) Thus, even if the Government only proved that Respondent was culpable under the theory of *respondeat superior* that would have been sufficient to discipline Respondent.

allowing Mr. Salley to use Stonewall Stewart's Funeral Director's license to retrieve human remains from the OCME on behalf of Capitol Mortuary.

As noted above, during all times relevant to this case: 1) Mr. Salley was not a licensed Funeral Director in the District of Columbia; 2) the regulatory scheme governing Funeral Directors defines the practice of "funeral directing" to include the care and transportation of human remains;³ 3) the regulatory requirement that restricts the transportation of human remains to licensed Funeral Directors has a direct financial impact on funeral establishments in the District of Columbia; 4) Mr. Salley transported ninety-one bodies to Capitol Mortuary;⁴ 5) Mr. Salley transported approximately 10% of all bodies for which Capitol Mortuary provided funeral services; and 5) Respondent was "principal Funeral Director" for Capitol Mortuary, the only licensed Funeral Director on Capitol Mortuary's Board of Directors, plus the corporate Vice President/Treasurer.

Further, even though I have credited Respondent's testimony that during the time in question her father was "in charge" of Capitol Mortuary and that she may not have initiated the scheme to have her husband transport bodies on behalf of Capitol Mortuary; I cannot credit Respondent's testimony that she knew absolutely nothing about her husband's activities until the Board sent her notice of a complaint regarding her husband. Exhibit 1-3. Based on Respondent's management responsibilities, her corporate responsibilities as Vice President/Treasurer, the financial windfall to Capitol Mortuary associated with Mr. Salley's activities and the fact that Mr. Salley is her husband, I do not find credible Respondent's assertion that she did not know that her husband was transporting human remains on behalf of

³ See D.C. Code, 2001 Ed. § 3-402(18), 17 DCMR 3199.1.

⁴ Exhibits 1-14 through 1-18.

Capitol Mortuary. Consequently, I conclude that the Government has presented a preponderance of evidence establishing that Respondent conspired with or aided or abetted Mr. Salley in violating or circumventing District laws and regulations limiting the transportation of human remains to licensed Funeral Directors.

Charges I and V

In these Charges, the Government alleged that Respondent: 1) “fraudulently or deceptively used a funeral director’s license in violation of D.C. Code, 2001 Ed. § 47-2853.17(a) (3)”; and 2) violated D.C. Code, 2001 Ed. § 3-408(a)(6) when she “engaged in misrepresentation or fraud in the conduct of the business of a funeral services establishment as a funeral director” All of the evidence presented during the hearing established that Mr. Salley was the individual who held himself out to be Stonewall Stewart, a licensed Funeral Director, authorized to transport human remains on behalf of Capitol Mortuary. The Government presented no evidence that Respondent personally engaged in misrepresentation or fraud. As set forth above, I have concluded that Respondent aided and abetted and/or conspired with her husband to misrepresent his status, and that Respondent’s involvement in this scheme was a violation of the prohibition against utilizing unfair competitive practices. However, in the absence of evidence establishing that Respondent personally misrepresented Mr. Salley’s status, I conclude the Government has not proven by substantial or a preponderance of evidence that Respondent engaged in misrepresentation or fraud. Therefore, Charges I and V are dismissed.

Charge II

In this Charge, the Government alleged that Respondent “provided false or misleading information in support of a renewal application for funeral director in violation of D.C. Code,

2001 Ed. § 47-2853.17(a)(1).” The predicate for this Charge is the 2004 application to renew Stonewall Stewart’s Funeral Director’s license. Exhibit 1-10. Attached to the application was a photograph of Darryl Salley. At the time this application was filed, Mr. Stewart was living in South Carolina. The application indicates that “Mr. Stewart” works for Capitol Mortuary and uses Capitol Mortuary’s address. The application bears a notation that the requisite \$125 fee was paid with check number 1009. Exhibit 1-10.

This evidence establishes that someone (mostly probably Mr. Salley) filed an application for a Funeral Director’s license with “false or misleading” information. However, there is nothing indicating that Respondent “knowingly provided false or misleading information” in support of the offending application. The apparent link between Respondent and the application, if there is one, was the check that was used to pay for the application. However, as the Government did introduce this check into evidence, I conclude the Government has failed to establish by substantial or a preponderance of evidence that Respondent “provided false or misleading information in support” of the renewal application. Therefore, Charge II is dismissed.

C. The Penalty

The Government argued that Respondent’s actions were “egregious” and that Respondent imprudently “harmed families who entrusted their deceased loved ones” to Respondent’s care. The Government has recommended that Respondent’s Funeral Director’s license be revoked. Respondent argued consistently that the Government had failed to meet its evidentiary burden, such that all the charges should be dismissed. However, Respondent never proposed an alternate sanction were I to conclude, as I have, that the Government established one or more violation.

In addition to the sought-after revocation of Respondent's Funeral Director's license, the pertinent statute provides for imposition of "a civil fine not to exceed \$ 5,000 for each violation by any applicant, licensee, or person permitted by this subchapter to practice in the District" D.C. Code, 2001 Ed. § 47-2853.17(c)(5). The statute also authorizes other non-financial sanctions, including a "reprimand." D.C. Code, 2001 Ed. § 47-2853.17(c)(4). I listened carefully to each witness's testimony, assessed their credibility, and reviewed the documents admitted into the record, and, based on this review, have concluded that Respondent violated the regulatory scheme governing the provision of Funeral Director's services with the intent and purpose of gaining an unfair competitive advantage by lowering its operating costs. For the years in question, Respondent was successful in gaining that advantage.

Moreover, while there is no evidence that anyone at Capitol Mortuary mishandled the bodies that Mr. Salley transported; the public has the right to expect that funeral establishments will comply with the governing regulatory scheme. We are at our most vulnerable when a loved one dies. During this difficult period, the public should not have to worry about the integrity of the funeral services industry. Consequently, I will impose a fine commensurate with the violations that recognizes the gravity of the violations at issue and Respondent's profiting from those violations. In keeping with the statutory authorization set forth in D.C. Code, 2001 Ed. § 47-2853.17(c)(5), I hereby impose a fine of \$5,000 for each charge that I have found the Government proved by a preponderance of evidence (Charges III, IV, VI, and VII). For the reasons set forth above, I order that Respondent pay total fines of \$20,000.⁵

IV. ORDER

⁵ In *Vann*, 480 A.2d 688, the Court of Appeals upheld revocation of the funeral director's (undertaker's) license based on the theory of *respondeat superior*. While the *Vann* case also involved the use of an unlicensed employee to transport human remains, there were other, more disturbing facts, in the *Vann* case which distinguish it from this matter.

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law, and the entire record herein, it is, this 15th day of April 2008

ORDERED that Respondent, Sharon Johnson-Salley shall pay **TWENTY THOUSAND DOLLARS (\$20,000)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order; it is further

ORDERED that failure to comply with the attached payment instructions and to remit a payment within the time specified may result in the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code, 2001 Ed., 2001 Ed. § 47-2853.17(b); it is further

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

April 15, 2008

/SS/
Jesse P. Goode
Administrative Law Judge